



## How To Request A Variance Or Interpretation From The Board of Zoning Appeals

Any property owner who has been denied a building permit or certificate of occupancy by the City of Gardner, Codes Administrator or Building Inspector has the right to appeal to the Board of Zoning Appeals. To proceed with the project, the property owner may appeal to the BOZA for one of the following:

- **VARIANCE:** Where the specific provisions of the zoning ordinance result in an unnecessary hardship, the BOZA may vary or modify that provision. A variance applies only to provisions such as setbacks, height regulations, parking regulations, etc. The BOZA may not grant a variance that would permit a use not allowed in the zoning district.

A request for a variance must meet all of the following conditions:

1. That the variance requested arise from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.
  2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
  3. That the strict application of the provisions of the Zoning Ordinance, of which the variance is requested, will constitute an unnecessary hardship upon the property owner represented in the application.
  4. That the variance desired will not adversely affect the health, safety, morals, order, convenience, prosperity, or general welfare of the public.
  5. That granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.
- **INTERPRETATION:** When the zoning ordinance is not clear on a matter, such as the appropriate use group in which to place a use not listed in the ordinance, or the location of a zoning district boundary, an appeal may be made to the BOZA for an interpretation of the ordinance.
  - **APPEAL OF ADMINISTRATIVE DETERMINATION OR DECISION:** When someone who is affected by an administrative determination or decision believes that action to be in error, an appeal must be made within thirty (30) days of the action in question.
  - **EXCEPTION FROM THE ZONING ORDINANCE:** The BOZA may grant an exception that is specifically authorized by the zoning ordinance for an applicant to use their property in a manner contrary to the provisions of the zoning ordinance and amendments thereto. (Provided such use subserves the general welfare and protects community interest.)

### HOW TO FILE AN APPLICATION

If you wish to file an application with the Gardner Board of Zoning Appeals for one of the above listed reasons, use the following procedure:

- A. Make an appointment to discuss the case with the Planning staff. A staff member will assist you in preparing your application. The office hours are Monday through Friday, 8 a.m. to 5 p.m.

B. Bring the following materials to the meeting:

1. The legal description of the affected property, available from the County Clerk's Office.
2. A plot plan, drawn to scale, showing the effected property including all existing and proposed improvements.
3. A letter from the property owner authorizing you to act on his/her behalf if you do not own the property.

A member of the City staff will review your request with you and advise you of other information required or procedures to be followed. You will also be given an application form for an appeal, exception, or variance.

When submitted for consideration, a member of the City staff will review materials to ensure that all necessary items have been furnished. Your request will be scheduled for the next available Board of Zoning Appeals hearing date.

An application is required to be filed with the Community Development Department a minimum of thirty (30) days prior to when a request is to be heard by the Board of Zoning appeals. A public hearing is required to be conducted on all requests. Notice of the time, place, and subject of such hearing shall be published in the official City newspaper by the City, a minimum of twenty (20) days prior to the date fixed for the public hearing. A copy of the notice shall be mailed by the City to the party's involved and the BOZA within seven (7) days of publication. A fee of \$100 is required with each application. Each individual request requires a separate application and fee submittal.

Before ten (10) days from the date of the hearing, the applicant is required to mail a copy of the application specifying the request, the legal description, and a map showing the location of the subject property to the owners of record of all real property located within two hundred feet (200') of the boundaries of the property which is the subject of the variance or exception being requested. The notice is required to be mailed certified mail, return receipt and proof of the mailing and the return receipts are required to be filed with the Secretary of the BOZA a minimum of five (5) days prior to the scheduled hearing date.

The applicant is required to file with the secretary of the BOZA on or before ten (10) days prior to the date the hearing is set, a plat of the land which is the subject of the said appeal or application. The plat shall be drawn to scale and show the ownership of all real estate lying within two hundred feet (200') from the boundaries of the subject property. The location of all present and proposed improvements relating to the property shall be shown on the plat.

The applicant may bring any maps, graphs, or other materials that will help explain the request to the meeting. Adjacent property owners and other interested parties will also be allowed to speak at the public hearing.

At the close of the public hearing, the BOZA will decide to approve, deny, or table the request to a future meeting for further study. The applicant will be notified by letter of the decision of the BOZA. If the BOZA finds in your favor, the Codes Administrator or Building Inspector will be notified and may issue your building permit upon your request.

If your request is denied, you may:

1. Ask for a rehearing indicating intent to present new and heretofore unheard testimony;  
or
2. Appeal the decision of the BOZA to the County Circuit Court within thirty (30) days of the decision of the BOZA.